IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appellants: OTERO et al.

Application Serial No.: 09/823,125

Filing Date: March 30, 2001

For: APPARATUS, METHODS AND
         ARTICLES OF MANUFACTURE
         FOR CONSTRUCTING AND
         EXECUTING TRANSACTION
         PROCESSES AND PROGRAMS

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Confirmation No.: 6818

Group Art Unit: 3692

Examiner: Ojo O. Oyebisi

  REPLY BRIEF

Attorney Docket No.: G08.051

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Mail Stop Appeal Brief - Patents
Commissioner for Patents
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Sir:

       This paper is submitted in response to the Examiner's Answer herein, mailed August 16,

2007.

In his very brief "Response to Argument", the Examiner asserts that the Kane reference discloses customers entering trading commands. With this statement appellants are in agreement. However, the Examiner apparently interprets the claim language of "to enter parameters for a trading algorithm" as broad enough to encompass entry of commands for individual trades, as disclosed in the reference. Appellants part company with the Examiner at this point, and respectfully contend that those of ordinary skill in the art would not understand entry of commands for individual trades as constituting entry of parameters for a trading algorithm.

Nevertheless, even if the Examiner's interpretation of "algorithm" could be considered reasonable, there remains a gap in his attempt to read (for example) claim 1 on Kane. This gap occurs in regard to the claim language that calls for "a first plug-in…for implementing the trading algorithm". According to the Examiner's own reading of claim 1 on Kane, the "plug-in" is to be accounted for by one of Kane's "intelligent agents". However, and inconsistently with this reading, the Examiner proposes that the entry of parameters for the algorithm implemented by the intelligent agent is accounted for by the customer's entry of trading commands to <u>override</u> the operation of the Kane's intelligent agents.

Thus the Examiner contradicts himself in what he considers to be the claimed "algorithm". On one hand he (appellants believe incorrectly) considers the algorithm in Kane to consist in a trading command entered by a human being. On the other hand, he considers the algorithm to be what is implemented by one of Kane's intelligent agents. With the latter interpretation the appellants would agree, but noting that the parameters for such algorithms are not entered by a human being, or at least not by one who also uses the claimed graphical user interface to monitor an order.

To summarize, both of the Examiner's selections of a feature from Kane to satisfy the claimed "algorithm" suffer from a significant flaw in terms of sustaining the pending rejection. If the trading command entered by the customer is considered to be an "algorithm", then there is lacking the claimed "plug-in" to implement the algorithm. If a strategy embodied in one of Kane's intelligent agents is considered to be an "algorithm", then there is lacking the claimed entry of parameters for the algorithm by a human being who is also using the graphical user interface to monitor an order.

The Examiner's inconsistent treatment of the claim language cannot hide the fact that the Kane reference simply fails to anticipate the claimed invention. Again this Honorable Board is respectfully urged to reverse the pending rejections.

Respectfully submitted,

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October 12 , 2007
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